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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,773	09/17/2003	Sean Murphy	355.2806-02	2954

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EXAMINER

GREEN, BRIAN

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/663,773

Applicant(s)

MURPHY ET AL.

Examiner

Brian K. Green

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 10-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Species II. (figures 2-7) in the reply filed on May 3, 2005 is acknowledged.

Claims 10-18 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 3, 2005.

### ***Claim Objections***

Claims 1-9 are objected to because of the following informalities: In claim 1, line 16, "said set" should be "said set of a plurality of drinking cups" to remain consistent with line 5. In claim 3, lines 3 and 6, "said second collection" should apparently be "said second collection of a plurality of first unique identifying indicia" to be consistent with claim 3, line 3. In claim 3, lines 4 and 5, "said first collection" should apparently be "said first collection of a plurality of first unique identifying indicia" to be consistent with claim 3, line 2. In claim 6, line 2, "series unique" should be "series of unique". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 5, it is not clear whether the plurality of drinking cups are the same as the ones defined in line 2. In claim 1, it is not clear whether the applicant is claiming a plurality of

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drinking cups wherein each drinking cup includes a cup body and a cup lid or just a plurality of drinking cups, i.e. no lid. In claim 2, line 2, and claim 3, line 4, the phrase "said cup body" is indefinite since it is not clear whether the applicant is referring to the cup body defined in claim 1, line 2 or the applicant is referring to the cups defined in claim 1, line 5. In claim 3, line 5, the phrase "said cup lid" is indefinite since it is not clear whether the applicant is referring to the cup lid defined in claim 1, line 2 or the applicant is referring to the cups defined in claim 1, line 5. In claim 7, line 3, there is no antecedent basis for "said plurality of cup bodies and said cup lids". In claims 8,9, and 16, lines 2 and 3, there is no antecedent basis for "said plurality of cup bodies" and for "said cup lids".

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vagedes (U.S. Patent No. 5,839,581) in view of Cain et al. (U.S. Patent No. 6,397,503) or Leicher (U.S. Patent No. 6,523,286).

Vagedes shows in figure 3 a cup (1) and discloses in column 1, lines 23-50, the use of multiple drinking cups, the cup (1) is provided with a unique identifying indicia (the letter Z), and the cups of Vagedes would be distributed to children. Vagedes does not disclose whether each unique indicia is associated with a unique time of use, tracking the time of use of the cups,

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and monitoring the cups to make sure none of the cups are missing from the set of cups. Cain et al. discloses that it is known to keep track of when a container is placed in a location and to keep track of how long it stays in that location, see column 1, lines 10-33. Leicher discloses that it is known to keep track of when a container is placed in a location and to keep track of how long it stays in that location, see column 1, lines 20-25, column 2, lines 18-20, and column 3, lines 30-40. In view of the teachings of Cain et al. or Leicher it would have been obvious to one in the art to modify Vagedes by associating a unique time of use with the indicia on the cup and tracking the time of use of the cup since this would prevent a child from drinking a liquid that has spoiled, i.e. prevent the child from getting ill from drinking spoiled milk. All of the cups would have to be accounted for at the end of time period since the cups are being monitored for time of use. Further, at the end of the day, each kid's cup would have to be accounted for when the kids leave day care or when the cups are washed in a parent's home that have numerous small children. In regard to claim 2, Vagedes shows in figure 3 that the body of the cup includes the indicia. In regard to claims 5 and 6, one of the other letters on the cup is considered to be the second sequential pattern of unique indicia.

Claims 3,4, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nemeroff (U.S. Patent No. 5,301,802) in view of Cain et al. (U.S. Patent No. 6,397,503) or Leicher (U.S. Patent No. 6,523,286) as applied to claim 1 above and further in view of Dyche (U.S. Patent No. 2,721,561).

The examiner has taken the position that the applicant is positively claiming the cup lids in claims 3,4,7-9 and 16. Nemeroff does not disclose placing a lid on each cup and providing

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indicia on each cup that matches the indicia on the respective cup body. Placing lids on cups is convention in the art (all fast food restaurants place lids onto cups) and Dyche shows in figures 1-2 the idea of placing indicia (24', 25', 26") onto lids, which matches the indicia on the body of the container. In view of the teachings of Dyche and what is conventional in the art it would have been obvious to one in the art to modify Nemeroff by attaching a lid to each of the cups since this would prevent the liquid within the cup from spilling and placing indicia on the lid which matches the indicia on the cup since this would allow the cup and lid to be matched together in an easier, faster, and more accurate manner. In regard to claim 4, Nemeroff discloses that the indicia are in the form of numbers. In regard to claim 7, Nemeroff shows in figure 3 the idea of placing indicia (26) on an adhesive label (24) and attaching the label to the cup. In regard to claim 8, the idea of molding indicia into an item it conventional in the art. It would have been obvious to one in the art to modify Nemeroff by molding the indicia into the body and lid since this would allow the indicia to be attached in an easier manner and a more durable manner. In regard to claim 9, Numeroff discloses on column 3, lines 13-17 the idea of forming the indicia by etching.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (571) 272-6644. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bkg  
Aug. 17, 2005

  
BRIAN K. GREEN  
PRIMARY EXAMINER